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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MARQUET JAMAINE HENRY,

Defendant and Appellant.

B209951

(Los Angeles County
Super. Ct. No. BA339102)

APPEAL from a judgment of the Superior Court of Los Angeles County, Norman J. Shapiro, Judge. Reversed and remanded with directions.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Following the denial of a motion to suppress evidence, defendant Marquet Jamaine Henry pleaded no contest to having a concealed firearm in a vehicle in violation of Penal Code section 12025, subdivision (a)(1).¹ On appeal, defendant contends the marijuana and cash found on his person and the gun discovered during a search of his truck were the fruit of an illegal detention and should have been suppressed. We agree with defendant that the search of the truck was unlawful.

FACTUAL AND PROCEDURAL BACKGROUND

The evidence at the suppression hearing established that on April 13, 2008, Los Angeles Police Officer Christopher Burke and his partner were on patrol shortly after 6:40 p.m., when they noticed defendant and another man standing on the street near a driveway. Defendant looked towards the officers and appeared startled. He turned away and began walking up the driveway, and moved his hands to the left front pocket of his pants. Officer Burke drove up and asked if defendant and his companion were on probation or parole. Defendant answered, “No,” and then volunteered “he had a little bit of weed on him.”

Officer Burke and his partner got out of the patrol car to conduct a narcotics investigation. At the time defendant was standing about one foot away from a Chevy truck. As the officers approached, they saw a plastic baggie containing what appeared to be marijuana protruding from the left front pocket of defendant’s pants. The officers

¹ Defendant was sentenced to three years formal probation on condition he serve 120 days in county jail. Pursuant to the terms of his plea agreement, the court dismissed two additional charges—carrying a loaded and unregistered firearm (Pen. Code, § 12031, subd. (a)(1)) and possession of marijuana for sale (Heath & Saf. Code, § 11359).

pointed to the baggie and asked defendant what it was. Defendant answered, “That’s the weed I was telling you about.”

The officers removed three plastic baggies from defendant’s pants pocket: in one baggie there was marijuana, in another there were 10 smaller baggies containing marijuana, and in a third baggie there were 11 smaller baggies, which were empty. The officers arrested defendant for possession of marijuana.² Officer Burke searched defendant and recovered about \$340 from a back pocket of defendant’s pants.

Officer Burke decided to check the ownership of the truck after seeing the key in the ignition, the truck windows rolled down, and defendant standing next to it. When asked by Officer Burke, defendant said the truck belonged to him. Intending to impound the truck following the arrest, Officer Burke searched it and found a loaded .22-caliber semi-automatic pistol under the center console. The officer testified the gun was not visible from outside the truck.

Before questioning him about the gun, Officer Burke advised defendant of his right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel. (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].) Defendant stated he understood these rights, waived them, and admitted he owned the gun.³

At the conclusion of the hearing, defense counsel moved to suppress the baggies of marijuana found on defendant’s person and the firearm found in his truck, arguing they had been seized as a result of an illegal detention. Counsel argued Officer Burke’s testimony that defendant walked away from the officers and then freely admitted having marijuana in his possession was false. Even if the officer’s testimony were true, it was insufficient reasonable suspicion to detain defendant by questioning him about his

² Defendant’s companion was also arrested, but was later released.

³ Defendant’s testimony at the suppression hearing differed markedly from the prosecution evidence and was discounted by the trial court as not credible.

probation or parole status. Counsel maintained that even if the seizure of marijuana were lawful, the search of the truck was unjustified.

The trial court denied the motion to suppress, finding the initial contact between defendant and the officers to have been a consensual encounter, which ripened into probable cause to arrest once officers saw the marijuana, and the search of the truck was lawful based on probable cause.

DISCUSSION

Standard of Review

In reviewing the ruling on a motion to suppress, the appellate court defers to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 891; *People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*James*, at p. 107.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.⁴ (*Hoyos*, at p. 891; *People v. Ramos* (2004) 34 Cal.4th 494, 505.) When a reviewing court determines the search or seizure of evidence was in violation of the Fourth Amendment, a defendant is entitled to have the judgment of conviction reversed and to have an opportunity to have his or her guilty plea set aside, and if the plea is set aside, the state may reinstate all the original charges contained in the information. (*People v. Miller* (1983) 33 Cal.3d 545, 556.)

⁴ Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art. I, § 28; *In re Randy G.* (2001) 26 Cal.4th 556, 561-562; *In re Lance W.* (1985) 37 Cal.3d 873, 885-890.)

The Search of the Truck Was Unlawful

Assuming in this case the initial contact between defendant and the officers amounted to a consensual encounter that developed into sufficient probable cause to arrest defendant for marijuana possession, the ensuing search of his truck was not valid on any grounds. As defense counsel argued before the trial court, Officer Burke did not testify that prior to the contact, he saw defendant driving, occupying or using the truck. Officer Burke testified only to seeing defendant beside the truck, with the windows open and key in the ignition. These facts fail to reasonably suggest the truck was in any way connected to defendant's drug activity or was a repository for evidence of any unrelated crime. (See e.g., *Arizona v. Gant* (April 21, 2009, No. 07-542) ___ U.S. ___ [2009 Lexis 3120] [circumstances unique to the vehicle context may justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle; and if there is probable cause to believe a vehicle contains evidence of criminal activity not related to the crime of the arrest, *United States v. Ross* (1982) 456 U.S. 798 [102 S.Ct. 2157, 72 L.Ed.2d 572] authorizes a search of any area of the vehicle in which the evidence might be found].)

Nonetheless, Officer Burke testified he searched the truck after deciding to impound it as a result of defendant's arrest, and the prosecutor argued that the police would have inevitably discovered the gun after impounding the truck during a routine inventory search. However, impounding defendant's truck was not constitutionally reasonable under the circumstances, rendering the inventory search unlawful.

In *People v. Williams* (2006) 145 Cal.App.4th 756, our colleagues in Division Eight held the inventory search of the defendant's car was unlawful because the People did not establish the threshold matter that the impoundment was lawful. There, the defendant was stopped by a police officer for a seatbelt violation. He pulled his rental car over to the curb in front of his residence and produced a valid driver's license; the defendant did not provide either proof of insurance or registration. The officer determined from a computer check that there was an outstanding arrest warrant for the defendant. The officer arrested the defendant and impounded the car. (*Id.* at p. 759.)

The *Williams* court noted, “As part of their “community caretaking functions,” police officers may constitutionally impound vehicles that ‘jeopardize . . . public safety and the efficient movement of vehicular traffic.’ [Citation.] Whether ‘impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police officers’ duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft.’ [Citation.] If officers are warranted in impounding a vehicle, a warrantless inventory search of the vehicle pursuant to a standardized procedure is constitutionally reasonable. [Citation.]” (*People v. Williams, supra*, 145 Cal.App.4th at p. 761.) The court concluded, under the circumstances presented, that “[n]o community caretaking function was served by impounding [the defendant’s] car.” (*Id.* at p. 762.) Therefore, it held unreasonable the inventory search of the car that resulted in the seizure of a loaded handgun in a bag in the back seat. (*Id.* at p. 763.)

Similarly in this case, defendant’s truck was parked on public property, presumably in a residential area. The prosecution made no showing the truck was parked illegally so as to block a drive way, or crosswalk or that it posed a hazard or impediment to maintenance, construction or emergency vehicles or other traffic. (Veh. Code, § 22651; *People v. Williams, supra*, 145 Cal.App.4th at p. 762.) Nor was there any indication that defendant did not have a valid driver’s license and registration of his truck such that it was necessary to impound it to prevent its immediate and continued unlawful operation. (Veh. Code, § 22651; *Williams*, at p. 763.) Here, as in *Williams*, the trial court should have granted defendant’s motion to suppress evidence. Given that the gun seized as evidence of the charge must be suppressed, the judgment must be reversed and the cause remanded to allow defendant to withdraw his plea. If the plea is set aside, the People may reinstate the original charges. (*People v. Ruggles* (1985) 39 Cal.3d 1, 13; *People v. Miller, supra*, 33 Cal.3d at p. 556.)

DISPOSITION

The judgment is reversed and the cause remanded with directions to the superior court to permit defendant to withdraw his guilty plea if he moves to do so within 30 days after this decision is final. If the plea is withdrawn, on motion of the People, the original charges shall be reinstated and the case shall proceed in accordance with the views expressed in this opinion. If defendant elects not to withdraw his plea of guilty, the superior court shall reinstate the judgment.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.